

**APPLICANT-STATE AGREEMENT NO. 09-97-32
ENVIRONMENTAL ENHANCEMENT AND MITIGATION PROGRAM**

**PROJECT NUMBER 97-83
97/98 FISCAL YEAR ALLOCATION**

EA #09-955022

THIS AGREEMENT, made effective this 30th day of June, 1998, by and between the County of Mono, hereinafter referred to as "APPLICANT" and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WITNESSETH

WHEREAS, as provided by Streets and Highways Code Section 164.56, enacted as part of Assembly Bill 471 (Katz) in 1989, funds have been allocated to APPLICANT by the California Transportation Commission (CTC) after being recommended for funding by the Resources Agency for the project submitted by APPLICANT as described in the application; and

WHEREAS, STATE and APPLICANT desire to enter into an Agreement relative to fund transfers and cost sharing on the described projects,

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - Project Administration

1. The application submitted by APPLICANT and all conditions and assurances contained therein are made an express part of this Agreement. Should any conflict exist between the application and the Agreement, the Agreement shall prevail.
2. The project, or projects, described in Exhibit A, hereinafter referred to as "PROJECT," shall be acquired, developed, designed and constructed as provided in this agreement.
3. If PROJECT is on STATE-owned right-of-way, STATE design and construction standards and practices shall be used. If PROJECT is not on STATE-owned right-of-way, the local government design and construction standards and practices shall apply.

FOR CALTRANS USE:								
I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.								
<i>M. Monagan</i> Accounting Officer						Date: <i>11/24/98</i>	\$ <i>200,000.00</i>	
Chapter	Statutes	Item	Fiscal Year	Program	BC	Category	Fund Source	\$
<i>282</i>	<i>1997</i>	<i>2660-101-183</i>	<i>97-98</i>	<i>20-30-27-000</i>	<i>S</i>	<i>262042</i>	<i>102-183-7</i>	

Note to LPA, check Exhibit A - Part III.

4. In cases where the approved fund transfer amount is less than the amount for which APPLICANT originally applied, APPLICANT is expected to complete PROJECT without downscoping it, unless specifically authorized to do so, in writing, by the State Resources Agency. This will be accomplished by APPLICANT supplementing PROJECT costs with another funding source or by finding a less costly way to complete the PROJECT.

5. The estimated cost of PROJECT is as shown in Exhibit A. APPLICANT may, with STATE approval, award a contract in an amount in excess of said estimate. It is understood, however, that the allocation of STATE funds for PROJECT will not exceed that limit set by Exhibit A.

6. In the event the estimated cost of PROJECT decreases by reason of low bids or otherwise, the allocation of STATE funds will be decreased proportionately with APPLICANT's decrease in participating contributions.

7. Minor non-substantive changes may be made in PROJECT as described in Exhibit A upon notice to STATE. No major change, however, may be made in said PROJECT except pursuant to an amendment to this Agreement duly executed by STATE and APPLICANT. STATE will determine what constitutes a minor change by accepting or rejecting the notice by APPLICANT of the intent to implement a specific minor change.

8. After completion and acceptance of PROJECT by STATE, STATE shall pay to APPLICANT, STATE's share of the cost of PROJECT within sixty (60) days after receipt of a signed invoice for payment submitted by APPLICANT. At the option of APPLICANT, monthly or quarterly pro rata progress payments may be made on a reimbursement basis upon submittal of invoices by APPLICANT and approval by STATE for PROJECT costs incurred. Pro rata payments will be based on the fund transfer amount in proportion to the total cost of PROJECT. An Invoice format document is included as Exhibit C.

9. If PROJECT involves work on the State highway system, it shall also be the subject of a separate standard form of encroachment permit between STATE and APPLICANT.

10. APPLICANT agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit B attached hereto) and further agrees that any agreement or service contract entered into by APPLICANT with a third party for performance of work connected with the PROJECT shall incorporate Exhibit B as a part of such agreement.

11. Upon completion of all work under the Agreement and prior to the expiration of the Agreement, APPLICANT shall prepare and file with STATE one (1) original and two (2) copies of a final project expenditure report on the project. The final project expenditure report to be submitted with the final invoice on the project.

ARTICLE II - Rights-of-Way

1. The acquisition, clearance, and improvement of rights of way necessary for the development of PROJECT shall be the responsibility of APPLICANT. Right-of-way acquisition and clearance costs may be included as a participating item of total PROJECT costs.

2. APPLICANT shall perform all PROJECT right-of-way activities in accordance with applicable State laws and regulations unless the STATE determines, in writing, that the State Uniform Relocation Assistance and Real Property Acquisition Policies Act (Government Code Secs. 7260-7277) does not apply.

3. APPLICANT, as part of its PROJECT design responsibility, shall identify and locate all utility facilities within the PROJECT area. All utility facilities, including those not relocated or removed in advance of construction, shall be identified on PROJECT plans and specifications.

4. If any existing public and/or private utilities conflict with the construction of PROJECT, APPLICANT will make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. If utility relocation is required within STATE right-of-way, APPLICANT shall conform to STATE standards, policies and procedures. If utility relocation is outside of STATE right-of-way, APPLICANT shall conform with local government policies.

5. APPLICANT shall certify legal and physical control of the PROJECT right-of-way ready for construction, and that the right-of-way was acquired in accordance with applicable State laws and regulations, subject to review and concurrence by STATE, prior to the advertisement for bids for construction/development of PROJECT.

6. If right-of-way acquisition and clearance costs are included as a participating item of PROJECT costs, STATE shall provide funds only for purchase of the right-of-way required for PROJECT. If APPLICANT acquires right-of-way which includes excess land, STATE will not participate in the cost of the excess portion. In the event land initially acquired as part of PROJECT is declared excess at a later date, APPLICANT shall reimburse STATE, no later than one hundred twenty (120) days after PROJECT completion, for either the pro rata fair market value at the time of disposal or, if that property is retained by APPLICANT, the pro rata fair market value of the excess land. The pro rata fair market value shall be based on the fund transfer amount applied toward purchase of the property in proportion to the total purchase price of the property.

ARTICLE III - Safety

1. APPLICANT shall comply with OSHA regulations regarding necessary safety equipment or procedures. If work is within STATE right of way, APPLICANT shall also comply with safety instructions issued by the District Safety Officer and other STATE representatives. APPLICANT's and contractor's personnel shall see that all individuals wear white hard hats and orange safety vests at all times while working within STATE right of way.

2. Pursuant to the authority contained in Section 591 of the Vehicle Code, STATE has determined that within such areas as are within the limits of the PROJECT and are open to public traffic, APPLICANT shall comply with all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. APPLICANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles when performing work within STATE right of way.

3. APPLICANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s) as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE IV - Inspection of Work

1. APPLICANT and any subcontractors shall permit STATE to review and inspect PROJECT activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

ARTICLE V - Equipment

Any equipment purchased as a result of this AGREEMENT is subject to the following:

1. APPLICANT shall maintain an inventory of all non expendable property. Non expendable property is defined as having a useful life of at least two years and an acquisition cost of \$500 or more.

2. If the purchased equipment needs replacement and is sold or traded in, the STATE shall receive a proper refund or credit.

3. At the conclusion of the AGREEMENT or if the AGREEMENT is terminated, the APPLICANT may either keep the equipment and credit the STATE in an amount equal to its fair market value or sell such equipment at the best price obtainable at a public or private sale in accordance with established STATE procedures, and credit the STATE in an amount equal to the sales price. If the APPLICANT elects to keep the equipment, fair market value shall be determined, at the APPLICANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the State and the APPLICANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the STATE.

ARTICLE VI - Management and Maintenance of Property

1. APPLICANT will manage and maintain, in the future, any property acquired, developed, rehabilitated, or restored with fund transfer amount. With STATE's prior approval, APPLICANT or its successors in interest may transfer the management and maintenance responsibilities in the property. If the property is not managed and maintained consistent with the application, APPLICANT or its successors in interest, at the discretion of STATE and 45 days notice to APPLICANT by STATE, shall reimburse STATE an amount at least equal to the amount of the STATE's funding participation in PROJECT.

2. All real property acquired with these funds shall be subject to an appropriate Title covenant approved by STATE. If the property is sold, traded or otherwise put to any use other than as approved in the Allocation for STATE funds, the State Highway Account, at the discretion of STATE and 45 days notice to APPLICANT by STATE, shall be reimbursed an amount at least equal to the amount of the STATE's funding participation in PROJECT or the pro rata fair market value of the property, including improvements, at the time of sale, whichever is higher. The pro rata fair market value shall be based on the fund transfer amount applied toward the purchase of the property and the design and construction of improvements in proportion to the total purchase price of the property and the cost of all improvements made prior to the time of sale. A Declaration of Restrictions dated June 9, 1982, was recorded in Mono County, and will exist as an underlying limitation on the property along with the Title covenant for this project, the Agreement Declaring Restrictive Covenants, dated June 30, 1998.

3. Attached as Exhibit D to this EEM Agreement is a map of Conway Ranch showing sheep grazing and fish rearing areas. No commercial, agricultural or other private for profit uses will be permitted on the 185 acre EEM portion of Conway Ranch except for naturalized sheep grazing and fish rearing (limited to ponds and irrigation channels) which are limited to areas shown on the map. Grazing practices shall occur only during the months from May to October and shall be managed in such a way as to prevent overgrazing. All lease income from sheep grazing and fish rearing practices must be used to offset costs incurred by the APPLICANT to maintain and operate the property. Notwithstanding the contents of any land use covenants and easements as may be applicable to the property, APPLICANT, and its successors and assigns, agree and covenant not to undertake or permit any additional uses on the property beyond those expressly allowed herein.

ARTICLE VII Retention of Records/Audit Review Procedures

1. **APPLICANT** shall maintain an accurate and detailed record of costs for **PROJECT**. Such records shall be retained and made available to **STATE**'s auditors for examination for a minimum period of four years from the date of final report of expenditures submitted to **STATE**. **APPLICANT** and its contractors agree that contract cost principles at least as restrictive as 48 CFR, Federal Acquisition Regulation System, Chapter 1, Part 31 shall be used to determine the allowability of individual items of costs. **APPLICANT** and its contractors also agree to comply with federal procedures as set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. A clause to this effect shall be inserted by **APPLICANT** in each **PROJECT** sub-agreement.
2. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by the Chairperson of the Audit Review Committee (ARC). The ARC will consist of the Assistant Director, Audits & Security (Chairperson); Deputy Director of Transportation Engineering; the Chief Counsel, Legal Division or their designated alternates; and two representative from private industry will be advisory in nature only and will not have voting rights. Additional members or their alternates may serve on the ARC.
3. Not later than 30 days after issuance of the final audit report, **APPLICANT** may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the Chief Deputy Director. The Chief Deputy Director will make the final decision for the **STATE**. The final decision will be made within three (3) months of receipt of the notification of dispute.
4. Neither the pendency of a dispute nor its consideration by **STATE** will excuse **APPLICANT** from full and timely performance of its obligations in accordance with the terms of this Agreement.
5. Any costs for which **APPLICANT** has received payment that are determined by subsequent audit to be ineligible under CFR 48, Federal Acquisition Regulation System, Chapter 1, Part 31, are to be repaid to **STATE** by **APPLICANT**.
6. Should **APPLICANT** fail to reimburse moneys due **STATE** within thirty (30) days of demand, or within such other period as may be agreed between the parties hereto, **STATE** is authorized to withhold future payments due **APPLICANT** from any source, including but not limited to, the State Treasurer, the State Controller and the CTC.

ARTICLE VIII - Miscellaneous Provisions

1. Neither **STATE** nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by **APPLICANT** under or in connection with any work, authority or jurisdiction delegated to **APPLICANT** under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, **APPLICANT** shall fully defend, indemnify and save harmless the State of California, all officers, and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by **APPLICANT** under or in connection with any work, authority or jurisdiction delegated to **APPLICANT** under this Agreement. **STATE** reserves the right to represent itself in any litigation in which **STATE**'s interest are at stake.
2. **APPLICANT**, and the agents and employees of **APPLICANT**, in performance of this agreement, shall act in an independent capacity and not as officers, employees or agents of the **STATE**.

3. STATE may terminate this Agreement with APPLICANT should APPLICANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, STATE may proceed with the PROJECT work in any manner deemed proper by STATE. If STATE terminates this Agreement with APPLICANT, STATE shall pay APPLICANT the sum due APPLICANT under this Agreement prior to termination, provided, however, that the cost of PROJECT completion to STATE shall first be deducted from any sum due APPLICANT under this Agreement, and the balance, if any, shall be paid APPLICANT upon demand.

4. Without the written consent of STATE, this Agreement is not assignable by APPLICANT either in whole or in part.

5. Time is of the essence in this Agreement.

6. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

7. The consideration to be paid APPLICANT, as provided herein, shall constitute full compensation for all of APPLICANT's costs and expenses incurred in the performance hereof, unless otherwise expressly so provided.

8. APPLICANT warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by APPLICANT for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this without liability, pay only for the value of the work actually performed, or in its discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. In accordance with Public Contract Code Section 10296, APPLICANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a Federal court has been issued against APPLICANT within the immediate preceding two-year period because of APPLICANT's failure to comply with an order of a Federal court that orders APPLICANT to comply with an order of the National Labor Relations Board.

10. APPLICANT shall disclose any financial, business, or other relationship with STATE or the California Transportation Commission (CTC) that may have an impact upon the outcome of this Agreement. APPLICANT shall also list current clients who may have a financial interest in the outcome of this Agreement.

11. APPLICANT hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

12. APPLICANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate the Agreement without liability, to pay only for the work actually performed, or to deduct from the Agreement price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

13. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature that may affect the provisions, terms, or funding of this Agreement in any manner.

14. This Agreement shall terminate on June 30, 1999 or upon completion of PROJECT, whichever is earlier in time, except that APPLICANT duties regarding operation, maintenance, and indemnification shall survive.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA DEPARTMENT OF APPLICANT
TRANSPORTATION

By [Signature], Chief
Program Management, Office of Local Programs

1120 "N" Street
Sacramento, California 95814

(916) 653-3581

By [Signature]
CHAIRMAN PLUMAS COUNTY BOARD OF SUPERVISORS
APPLICANT Representative Name and Title

Agency

Address

City, State, ZIP

Telephone No.

EXHIBIT A
PROJECT DESCRIPTION

APPLICANT: Mono County
PROJECT NAME: Conway Ranch
COUNTY: Mono

I. Project Location and Description of Work Proposed:

Location: Between Cemetery Road and State Route 167 on Highway 395 in the city of Lee Vining in the county of Mono.

Description of Work: Project will acquire approximately 185 acres of the Conway Ranch property. Lands to be acquired will include deer migration corridor as well as other habitat and historic resources.

II. Proposed Project Funding:

TOTAL PROJECT COST: \$520,020

Financing:

Federal Funds (if any): \$0

APPLICANT Funds (if any): \$320,020

State Funds (amount approved by CTC): \$200,000

III. Remarks and Covenants

(On EEM projects involving acquisition of real property, or rights thereto, if the Applicant requests that State funds be deposited directly into an escrow account, insert the following)

Pursuant to the terms of Applicant-State Agreement No. 09-97-32 dated 6/30/98
and effective immediately, the County of mono
(Name of Applicant)

requests and authorizes that the EEM fund warrants be made out in the name of the

Inyo Mono Title Company and mailed to
(Name of Title Company)
400 West line st., Bishop CA 93514
(Address of Title Company)

Phone No. (760)873-5821 Attention: Mary Lou Sipherd
(Name of Escrow Agent)
for Escrow No. 107866

EXHIBIT B**FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of this Agreement, APPLICANT will not discriminate against any employee for employment because of race, sex, color, religion, ancestry, or national origin. APPLICANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, sex, color, religion, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. APPLICANT shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. APPLICANT will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

3. Remedies for Willful Violation:

- a) The State may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which APPLICANT was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the APPLICANT has violated the Fair Employment Practices Act and had issued an order, under Labor Code Section 1426, which has become final, or obtained an injunction under Labor Code Section 1429.
- b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services hereunder shall be borne and paid for by APPLICANT and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or the thereafter may become due to APPLICANT, the difference between the price named in the Agreement and the actual cost thereof to STATE.